

REMARKS

The Official Action mailed October 16, 2006 has been carefully considered. Claims 1-17 are pending in the application and stand rejected. Claims 2, 13 and 16 have been cancelled. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

Claims 1-2, 4-8, and 11-12 stand rejected under 35 USC §103(a) as being unpatentable over Singh et al. U.S. Patent Number 6,493,641.

As an initial matter claim 1 has been amended to recite “a package of base pet food wherein said base pet food is characterized as having been prepared at a temperature at or above 200 °F and/or a shear rate at or above 100 sec⁻¹, said package of base food containing said separately packaged nutritional additive, wherein said separately packaged nutritional additive is packaged in an air-tight container which substantially prevents the introduction of air and which allows for dispensing of the nutritional additive without substantial introduction of make-up air into said container and oxidation of said additives.” Such amendment incorporates the subject matter of claim 2 and the subject matter at paragraph 0029 of the published application, which recites that the container for the nutritional additive may be one that allows for dispensing “without introduction of any make-up air which would otherwise cause some unwanted oxidation of the nutritional additives.” No new matter has been entered. Claim 15 has been similarly amended.

This subject matter was not specifically addressed with reference to the cited art, which also does not appear to disclose the claimed subject matter. Accordingly, Applicant respectfully asserts that independent claims 1 and 15 now define over the cited art.

The principal reference of Singh was relied upon for a teaching of a dry dog food base and a bottle of sauce that was identified as including vitamins, minerals, etc. However, nothing in this reference recognized the importance of providing such nutrients in a manner which would allow for the dispensing without introduction of air to allow for unwanted oxidation. Stated another way, the “sauce” of Singh was not protected from oxidation due to make-up air being introduced into the container for the nutrients, as currently recited in the independent claims herein. As the Examiner may appreciate, this ensures more efficient protection of the nutrients over the course of the use of the food and nutritional additive.

Furthermore claim 3 stands rejected under 35 USC §103(a) as being unpatentable over Singh in view of Brandt et al, U.S. Publication No. 2004/0029974. As dependent claim 3 incorporates the subject matter of independent claim 1, Applicant respectfully asserts that the arguments made with respect to claim 1 are applicable with respect to claim 3 as well.

In addition, the Applicant also notes that Brandt discloses packaging that includes “a box 12 containing a pet food product 16 in a plastic bag 15 visible through window opening 14 of the box 12.” Paragraph [0032] of Brandt. Brandt also discloses “[t]he box 12 includes a reclosable top structure 18 permitting access to the plastic bag 15 and pet food product therein, and reclosable securement of the reclosable top structure 18 of the box, to enable maintenance of freshness, moisture content, etc., of the food stuff in the box.” Paragraph [0033]. However, Brandt does not appear to teach or suggest that the use of an air-tight container which substantially prevents the introduction of air and allows for dispensing of the nutritional additive without substantial introduction of make-up air into the container which would otherwise cause oxidation of the nutritional additives.

Claims 9-10 stand rejected under 35 USC §103(a) as being unpatentable over Singh in view of Vita-Gravy or Torney et al, U.S. Publication No. 2003/0194423, Axelrod, US. Patent No. 6,586,027. Claims 9 and 10 depend from independent claim 1 and therefore the arguments above apply to claims 9 and 10 as well.

Claim 15-17 also stand rejected under 35 USC §103(a) as being unpatentable over Singh et al in view of McCullough et al, U.S. Patent No. 4,020,187, or Brown et al, U.S. Patent No. 5,894,029, and further in view of Addy, U.S. Patent No. 6,379,727. As independent claims 13 and 15 have been amended to recite that the “separately packaged nutritional additive is packaged in an air-tight container which substantially prevents the introduction of air and which allows for dispensing of the nutritional additive without substantial introduction of make-up air into said container and oxidation of said additive.” Applicant respectfully asserts that the arguments made above with respect to claims 1-3 apply with respect to claim 15 as well as their dependent claims.

Finally, Applicants note the statement in the Office Action at page 4 that the art of record did not teach the heat and shear conditions recited in the pending dependent claims, which have

now been incorporated into independent claims. Applicants agree. Nevertheless, the Office Action goes on to indicate that the prior art discloses that products are “typically prepared” by processes that include heating and shearing, somehow rendering the specific conditions recited in the claims as obvious.

It is therefore Applicant’s position that the prior art does not teach or suggest the use of the nutritional additives herein for the very specific heating and shearing conditions recited in the claims, which Applicant has identified as those temperatures where nutritional supplementation is particularly necessary. In other words, while the prior art may have alluded to incorporating additives due to heat, the prior art, in Applicants’ view, was in some sense wasting the use of the additives on those food products that were processed at temperatures and shear rates below what is currently claimed and the prior art therefore failed to identify the recited critical levels of temperatures and shear rates.¹

Having dealt with all the objections raised by the Examiner, it is respectfully submitted that the present application, as amended, is in condition for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

¹ In addition, the Applicant also notes that it is unclear as to whether Brown et al or McCulloch teach or suggest the claimed shear rates. Shear rate is defined as “the difference in velocity per unit normal distance (normal to the direction of flow).” Chris Rauwendaal, *Polymer Extrusion*, 178 (Hanser Publishers 1994), attached hereto. Accordingly, while the cited references may disclose the rotational speed of their mixing devices neither reference distinctly disclose such information to determine the shear rate imposed on the material.

AMENDMENT

Serial Number: 10/783,866

Filing Date: February 20, 2004

Title: Pet Food With Enhanced Nutritional Value

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In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

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